

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JUST FILM, INC., ET AL.,

Plaintiffs,

v.

No. CV 10-01993

MERCHANT SERVICES, INC.,

ET AL.,

Defendants.

**CERTIFIED
COPY**

Deposition of

SARA KRIEGER

Monday, July 16, 2012

PORTIONS CONFIDENTIAL -

ATTORNEYS' EYES ONLY

Reported by: Adam D. Miller, RPR

NOGARA REPORTING SERVICE
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1 You can answer. 11:15

2 THE WITNESS: Well, \$60 for a specific piece of 11:15
3 equipment for us would mean that that is the cost 11:15
4 that the market would bear. So it's, if it's, if 11:15
5 it's \$60 or it's \$50, dependent on what we have seen 11:15
6 historically, that's the guide or that's the, really 11:15
7 the guideline to the vendor as to what he can, what 11:16
8 he can sell to, to his merchant. 11:16

9 MR. KUO: Q. Where a proposed lease has a set 11:16
10 monthly payment that is, for example, three times 11:16
11 what the rate cap would otherwise indicate, does MBF 11:16
12 believe that in this instance, the market can bear a 11:16
13 monthly lease that is that high? 11:16

14 MS. NIGRO: Objection. 11:16

15 You can answer if you know for -- 11:16

16 THE WITNESS: It really depends. If you, I 11:16
17 guess if you give me a specific, I could answer 11:16
18 better. 11:16

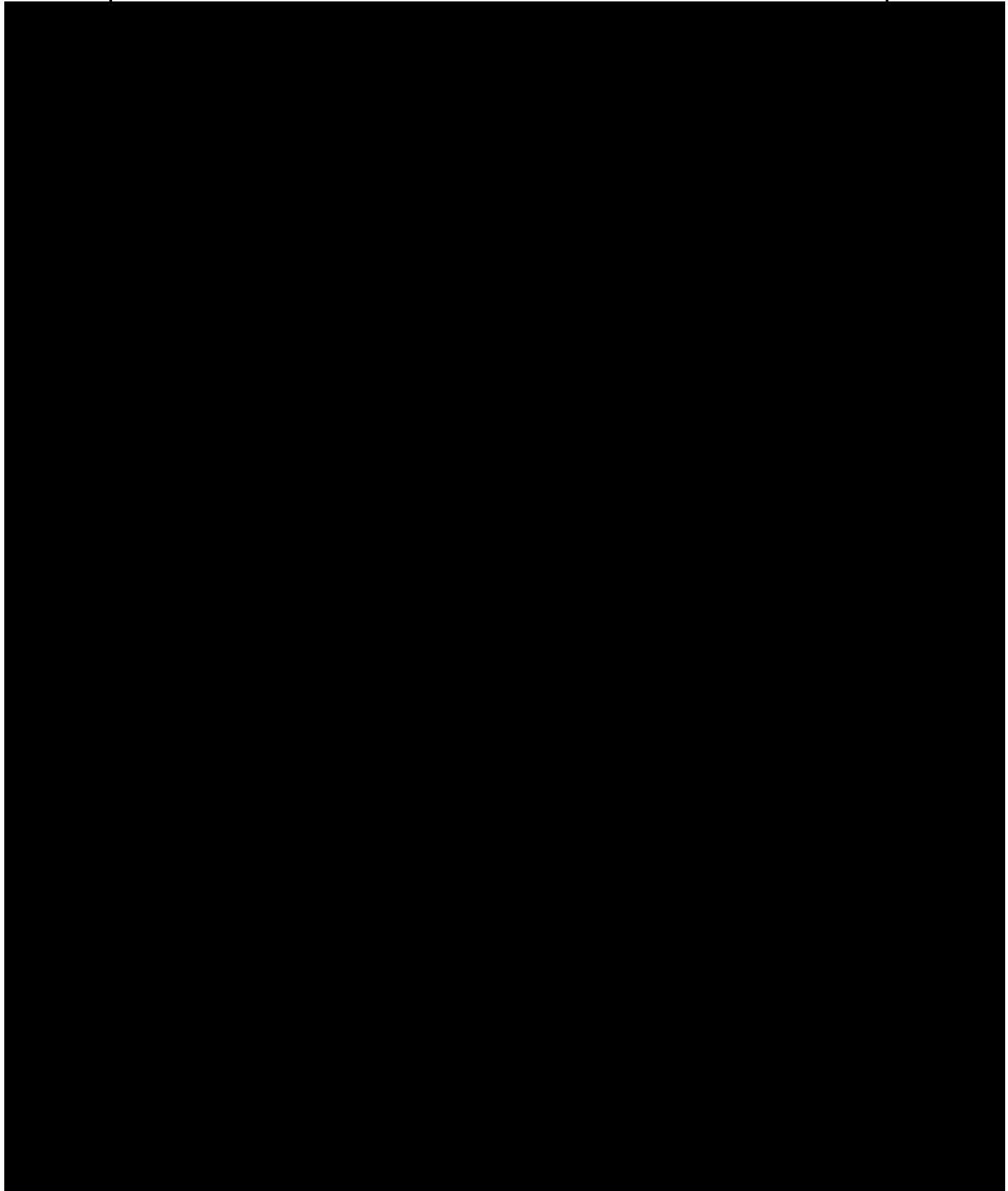
19 MR. KUO: Q. For example, check -- take a piece 11:16
20 of check-reading equipment that has a rate cap of 11:16
21 \$30. Is that -- is that a -- in your recollection, 11:16
22 is that about what a check reader normally would 11:17
23 have, about \$30? 11:17

24 MS. NIGRO: Objection; vague. 11:17

25 THE WITNESS: Possibly. Without looking, I 11:17

1 don't know off the top of my head.

11:17



21	Q. Did -- was MBF aware that Merchant	11:19
22	Services was offering both service fees and	11:19
23	equipment as part of the amount showing on the	11:19
24	equipment finance lease as a monthly payment?	11:19
25	MS. NIGRO: Objection; lacks foundation.	11:20

1 reference what the retail price of equipment is on 11:40
2 the market today? 11:40

3 A. I -- do we have a reference? I'm not sure 11:40
4 I understand the question. 11:40

5 Q. In other words, you testified that the 11:40
6 lease caps reflect what the market will bear in your 11:41
7 understanding. As part of understanding what the 11:41
8 market will bear, do you or any person working under 11:41
9 you research what the, what the equipment could be 11:41
10 purchased for for retail? 11:41

11 MS. NIGRO: Objection. 11:41

12 You can answer. 11:41

13 THE WITNESS: It might be something that's 11:41
14 looked at, but it has no relevance to what the 11:41
15 vendors can sell the unit for in the market. 11:41

16 MR. KUO: Q. Do you have an understanding that 11:41
17 MBF needs to pay to taxing jurisdictions property 11:41
18 taxes based on the equipment that was leased by it? 11:41

19 MS. NIGRO: Objection. 11:41

20 You can answer. 11:41

21 THE WITNESS: Do I have -- I'm sorry. Do I 11:41
22 have an understanding that MBF is required to pay 11:41
23 property tax for the equipment? 11:41

24 MR. KUO: Q. Yes. 11:41

25 A. Yes, I'm aware of that. 11:41

1 Q. And it thereafter collects back the 11:41
2 property taxes in certain circumstances from the 11:41
3 merchant? 11:41

4 MS. NIGRO: Objection. 11:41

5 You can answer. 11:41

6 THE WITNESS: Yes. I'm aware of that. 11:41

7 MR. KUO: Q. And do you have an understanding 11:42
8 of how presently the company determines the tax 11:42
9 basis on which that property tax is calculated? 11:42

10 A. I'm not aware of the calculations or 11:42
11 anything of that... 11:42

12 Q. Is this document, Exhibit 276, a form 11:42
13 vendor agreement that was in place in 2008? 11:42

14 A. I believe so. 11:42

15 Q. Is it not prepared with any specific 11:42
16 vendor in mind? In other words, it's not a 11:42
17 prenegotiated -- I mean, it's a prenegotiated or 11:42
18 standard contract? 11:42

19 A. It's the standard -- it's a standard 11:42
20 template of contract. 11:42

21 Q. In negotiating with ISOs for the first 11:42
22 time, is this the starting point of the negotiations 11:42
23 or is -- generally speaking? 11:43

24 MS. NIGRO: Objection. 11:43

25 You can answer. 11:43

1 Sara Krieger
2 c/o Moses & Singer
3 405 Lexington Avenue, 12th Floor
4 New York, New York 10174-1299
5 Attn: Jennifer Nigro, Esq.

6 Date: July 31st, 2012
7 Re: Just Film vs. Merchant Services, et al.
8 Deposition Date: Monday, July 16th, 2012

9 Dear Ms. Krieger,

10 Please be advised the original transcript
11 of your deposition is ready for your review.

12 Pursuant to CCP Section 2025.520(a), you
13 have 30 days following the date of this notice to
14 read, correct if necessary, and sign your
15 transcript unless the attending parties and the
16 deponent agree on the record or otherwise in
17 writing to a longer or shorter time period. The
18 deponent may change the form or the substance of
19 the answer to a question, and may either approve
20 the transcript of the deposition by signing it,
21 or refuse to approve the transcript by not
22 signing it. You are not required by law to read
23 and sign your deposition transcript. All parties
24 will be informed of the corrections. The
25 original transcript will then be sealed and sent
to the examining attorney pursuant to the
applicable law.

You may either come to our office to read
and sign the original transcript, or you may
contact your attorney or the attorney who
arranged for you to be present at your
deposition. If they have ordered a copy of the
transcript, you may review their copy and make
corrections by submitting, signing and returning
the attached form. If you choose to review your
transcript at our office, please call first to
make an appointment. Should you have any
question regarding these instructions, please
call.

Sincerely,

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cc: All counsel, original deposition